

Russell R. Arens [CSB No. 137112]
Richard E. Nusbaum [CSB No. 164723]
LAW OFFICES OF RUSSELL R. ARENS
3020 Old Ranch Parkway, Suite 300
Seal Beach, California 90740
Telephone: (562) 366-5200
Facsimile: (562) 430-2204
Attorneys for Defendant
ALTITUDE FRANCHISING, LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, HALL OF JUSTICE

NICOLE TRAKIMAS, an individual,)	Case No.: 37-2018-00020819-CU-PO-CTL
)	[Assigned for all purposes to the Hon.
Plaintiff,)	Timothy B. Taylor, Dept. C72]
)	
vs.)	ANSWER OF ALTITUDE
)	FRANCHISING, LLC TO FIRST
ALTITUDE FRANCHISING, LLC, et al.,)	AMENDED COMPLAINT OF PLAINTIFF
)	NICOLE TRAKIMAS
Defendants)	
)	Complaint Filed: 4/26/18
)	Trial Date: None
)	

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

COMES NOW, Defendant, ALTITUDE FRANCHISING, LLC, and answering the First Amended Complaint of Plaintiff NICOLE TRAKIMAS on file herein for itself alone admits, denies, and alleges as follows:

Under the provisions of section 431.30 of the California Code of Civil Procedure, this answering Defendant denies each and every allegation in the Complaint and denies that Plaintiff has suffered damage in the sum or sums alleged or in any other sum or sums, or at all.

Further answering the Complaint and the whole thereof, this answering Defendant denies that Plaintiff has sustained any injuries, damage or loss, if any, by reason of any act or omission on the part of this answering Defendant.

1 **FIRST AFFIRMATIVE DEFENSE**

2 (FAILURE TO STATE CAUSE OF ACTION)

3 Plaintiff's complaint fails to state a cause of action against this answering Defendant.

4 **SECOND AFFIRMATIVE DEFENSE**

5 (COMPARATIVE NEGLIGENCE)

6 Plaintiff was negligent in and about the events which precipitated the incident alleged in
7 the Complaint. Said carelessness and negligence on Plaintiff's own part proximately contributed
8 to the happening of the incident and to the injuries, loss and damages complained thereof, if there
9 were any. Accordingly, Plaintiff's right to recover damages is correspondingly reduced.

10 **THIRD AFFIRMATIVE DEFENSE**

11 (ASSUMPTION OF THE RISK)

12 Any risk or hazard that existed at the time and place of the alleged incident was assumed
13 by Plaintiff.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 (FAILURE TO EXERCISE DUE CARE)

16 There is no liability as the danger, if any, which existed at the time and place mentioned
17 in the Complaint, was a danger that would have been reasonably apparent to, and would have
18 been anticipated by, a person exercising due care.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 (FAILURE TO MITIGATE)

21 Plaintiff has failed to mitigate the damages alleged in the Complaint and thus, any
22 recovery should be reduced accordingly.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 (UNREASONABLE, UNNECESSARY MEDICAL CARE)

25 That the medical care and treatment provided to Plaintiff, and the resulting costs thereof
26 were both unreasonable and unnecessary under the circumstances and illegal under the facts and
27 circumstances prevailing.

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 (NO INJURIES)

3 The injuries alleged to have been sustained by Plaintiff were not as a result of the incident
4 and not caused by personnel of this answering Defendant.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 (NEGLIGENCE AS TO OTHERS)

7 Others were negligent in and about the events which precipitated the incident alleged in
8 the Complaint. Said carelessness and negligence on the part of others proximately contributed to
9 the happening of the incident and to the injuries, loss and damages complained thereof, if there
10 were any. Accordingly, Plaintiffs' right to recover damages this answering Defendant is
11 correspondingly reduced.

12 **NINTH AFFIRMATIVE DEFENSE**

13 (LACK OF DANGEROUS CONDITION)

14 There is no liability as no dangerous condition exists or existed at the time and place
15 mentioned in the Complaint, and any such perceived danger would have been reasonably
16 apparent to, and would have been anticipated by, a person exercising due care, and as such,
17 Plaintiff's right to any recovery on this basis is precluded.

18 **TENTH AFFIRMATIVE DEFENSE**

19 (WAIVER)

20 The injuries alleged to have been sustained by Plaintiff are unrecoverable and precluded
21 based upon an intentional and knowing waiver signed by Plaintiff prior to entering into the
22 premises. Such a knowing and express waiver precludes Plaintiff from any recovery as to this
23 answering Defendant.

24 **ELEVENTH AFFIRMATIVE DEFENSE**

25 (LACK OF DESIGN DEFECT)

26 There is no liability as no defect in design exists or existed at the time and place
27 mentioned in the Complaint in the alleged product, and specifically, no defect in design exists or
28 existed with the pit, as no ASTM standards for trampoline parks are applicable for the particular

1 product alleged to be defective. As such, Plaintiff's right to any recovery on this basis is
2 precluded.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 (LACK OF MANUFACTURING DEFECT)

5 There is no liability as no defect in manufacturing exists or existed at the time and place
6 mentioned in the Complaint in the product alleged, as the product, specifically, the pit, was
7 manufactured as designed. As such, Plaintiff's right to any recovery on this basis is precluded.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 (INTENTIONAL MISREPRESENTATION - LACK OF SPECIFICITY)

10 The complaint lacks the specificity required as to the alleged representations made to
11 Plaintiff. As such, Plaintiff's right to any recovery on this basis is precluded.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 (INTENTIONAL MISREPRESENTATION - LACK OF INTENT)

14 The complaint is ambiguous as to lacks the requisite allegations that Defendant made any
15 representations directly and intentionally to Plaintiff. As such, Plaintiff's right to any recovery on
16 this basis is precluded.

17 **FIFTHTEENTH AFFIRMATIVE DEFENSE**

18 (CONCEALMENT - LACK OF INTENT)

19 The complaint is ambiguous as to lacks the requisite allegations that Defendant withheld
20 any material facts purposefully from Plaintiff. As such, Plaintiff's right to any recovery on this
21 basis is precluded.

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2

3
4
5
6

7

- 8
9
0

2

2

3
4
5

6

7
8

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On March 7, 2019, I served the foregoing document described as: **ANSWER OF ALTITUDE FRANCHISING, LLC TO FIRST AMENDED COMPLAINT OF PLAINTIFF NICOLE TRAKIMAS**. This document was served on the interested party or parties in this action by placing a true copy thereof in sealed envelopes, and addressed as noted on the attached mailing list.

[] VIA FACSIMILE: I caused all of the pages of the above entitled document to be sent to the recipients noted above via electronic transfer (FAX) at the facsimile number as noted in the attached mailing list. This document was transmitted by facsimile and transmission reported complete without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

R. J. P.

RICHARD E. NUSBAUM

Trakimas v. Altitude Franchising, LLC dba Altitude Trampoline Park et al.
San Diego County Superior Court – Hall of Justice
Case No. 37-2018-00020819-CU-PO-CTL

SERVICE LIST

Matthew D. Clendenin The Bronson Firm, APC 600 West Broadway, Suite 930 San Diego, CA 92101 Tel: (619) 374-4130; Fax: (619) 568-3365	Attorneys for Plaintiff NICOLE TRAKIMAS
Sarah E. Serrano Wood Smith Henning & Berman, LLP 501 West Broadway, Suite 1200 San Diego, CA 92101 Tel: (619) 849-4900; Fax: (619) 849-4950	Attorneys for Defendant FUN STOP MANUFACTURING, LLC